

1 **RUSING LOPEZ & LIZARDI, P.L.L.C.**

2 6363 North Swan Road, Suite 151

3 Tucson, Arizona 85718

4 Telephone: (520) 792-4800

5 Mark D. Lammers (AZ # 010335)

6 mdlammers@rllaz.com

7 *Attorney for Defendant Jimmie L. Stanton*

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9 **IN THE UNITED STATES DISTRICT COURT**

10 **FOR THE DISTRICT OF ARIZONA**

11 United States of America,

12 Plaintiff,

vs.

13 Jimmie L. Stanton

14 Defendant.

15 **Case No. 4:16-CR-710-JGZ-LAB**

16 **DEFENDANT'S RESPONSE TO THE
GOVERNMENT'S OPPOSITION TO
TESTIMONY OF DEFENSE EXPERT**

17 (Assigned to Hon. Jennifer G. Zipts)

18 I. Mr. Wall's expert testimony on the use of "blind mules" by trafficking
organizations.

19 The Government argues that Mr. Wall's testimony should be precluded by Fed. R.
20 Evid. 702 because it is not "helpful, relevant, or otherwise admissible" (page 1 of Plaintiff's
21 Response) based upon its assertion that Mr. Wall lacks cross-border experience with respect
22 to drug trafficking.

23 Mr. Wall served twenty-one years with the Bureau of Alcohol, Tobacco, Firearms,
24 and Explosives, and he has another eight years of combined military and US federal law
25 enforcement experience. He had the opportunity to conduct and participate in hundreds of
26 investigations, many of these focused on the activities of Mexican drug trafficking
organizations (DTOs) and transnational criminal organizations (TCOs) that involved the

1 trafficking of drugs, weapons, money and people between Mexico and the United States".

2 (Emphasis added)

3 Mr. Wall is an expert and his testimony would certainly be helpful to the jury
4 (which, as it is reasonable to assume, does not have any direct knowledge in the subject
5 matter) in understanding the schemes and methodologies employed by cross-border drug
6 traffickers to smuggle narcotics from Mexico into the United States and the use of "blind
7 mules" to transport drugs.

8 II. Mr. Wall's testimony is admissible because it does not violate Fed. R. Evid. 801

9 The Government seeks to preclude Mr. Wall's testimony, asserting it would be based
10 upon the Defendant's hearsay statements, in violation of Fed. R. Evid. 801.

11 Expert witness may rely on facts or data that have not been admitted in evidence, and
12 that may not be admissible, if they formed basis for his opinion and if they are of a type
13 reasonably relied on by experts in the field. *State v. Lundstrom*, 161 Ariz. 141 (Ariz. 1989).

14 Furthermore, hearsay is admissible under Rule 703 Fed. R. of Evid., which states
15 that an expert may base their opinion on facts or data that the expert has been made aware
16 of or personally observed. If experts in the field would reasonably rely on those kinds of
17 facts or data in forming their opinion, they don't have to be admissible for the option to be
18 admitted. If the facts or data would otherwise be inadmissible, they may be disclosed to the
19 jury if their probative value in helping the jury evaluate the opinion substantially outweighs
20 their prejudicial effect. Such information may include hearsay. *Paddock v. David*
21 *Christensen, Inc.*, 745 F.2d 1254 (9th Cir. 1984).

22 In our case, the information relied on by Mr. Wall along with his training and
23 experience (*i.e.*, that the Defendant was an unwitting carrier of the drugs because drug
24 traffickers likely hid the narcotics in Mr. Stanton's trailer) form the necessary basis for his
25 opinion. In fact, the account of the facts as reported serve the very purpose of showing how

1 they correspond to usual schemes employed by Mexican drug traffickers to smuggle drugs
2 into the US using unaware people who cross the border for lawful purposes¹.

3 **III. Conclusion**

4 For the foregoing reasons, Mr. Wall's testimony is admissible, relevant, and helpful
5 to the trier of fact regarding Mr. Stanton's defense.

6 Defendant respectfully requests that the Court deny Plaintiff's motion.

7 DATED this 1st day of May, 2017.

8 **RUSING LOPEZ & LIZARDI, P.L.L.C.**

9 By: /s/ *Mark D. Lammers*

10 Mark D. Lammers

11 Attorney for Jimmie L. Stanton

12 **RUSING LOPEZ & LIZARDI, P.L.L.C.**
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22 ¹ The Government allegations (Par. 2 of Government's Response) concerning Mr. Wall's statement
23 on SENTRI Pass Holders are not relevant to our case. The Government mischaracterizes Mr.
24 Wall's statement in this regard. In his affidavit, Mr. Wall does not, and never intended to, claim
25 that Defendant had a SENTRI pass. As a matter of fact, Mr. Wall's reference to SENTRI pass
holders was just given as an example of the various methodologies employed by drug traffickers to
smuggle narcotics into the US territory.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of the foregoing was served this 1st day of May 2017, via
3 Notice of Electronic Filing, generated and transmitted by the ECF system of the District of
4 Arizona, to the following CM/ECF registrants:

5 Fred A. Cocio, Esq.
6 Assistant U.S. Attorney
Fred.Cocio@usdoj.gov

7 Arturo A. Aguilar
8 Assistant U.S. Attorney
arturo.aguilar@usdoj.gov

10 /s/ Aneta Wrzeszcz